

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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**U.S. UNDERWRITERS INSURANCE COMPANY,**

CIV: 07 CIV 8690

Plaintiff(s),

-against-

**ANSWER**

**MEL-MAR REALTY CORP., FRANK RIVERA,  
MECHANICAL HEATING SUPPLY, INC.,  
JOSE AMADEO ZELAYA AND MARIA ZELAYA**

Defendant(s),

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Defendants, Jose Amadeo Zelaya and Maria Zelaya, by their attorney LORENZO J. TASSO, as and for their answer to the complaint of plaintiff, U.S. Underwriters Insurance Company, alleges as follows:

- 1 Denies each and every allegation contained in the paragraphs of the complaint designated 6, 7, 9, 11, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 51, 52, 58, 59, 60, 65, 66, 68, 74, and 75.
- 2 Denies any knowledge or information sufficient to form a belief as to the truth contained in the paragraphs of the complaint designated 1, 2, 17, 19, 38, 54, 57, 62, 64, 67, 69, 70, 71, 72, and 73.
3. Denies each and every allegation contained in the paragraphs of the complaint designated 8, 10, 24, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, and 50 and refers all questions of law to the court
4. Denies any knowledge or information sufficient to form a belief as to the truth contained in the paragraphs of the complaint designated 21, 22, 23, and refers all questions of law to the State of New York Workers' Compensation Board.
5. Denies each and every allegation contained in the paragraphs of the complaint designated 55, however admits that occurrence took place at a location within the premises known as 460-482 Timpson Place, Bronx, New York.
6. Denies each and every allegation contained in the paragraphs of the complaint designated 14, however admits that Jose Amadeo Zelaya was caused to be injured while installing sheetrock at a location within the premises known as 460-482 Timpson Place, Bronx , New York.
7. Admits each and every allegation in the paragraphs of the complaint designated 13, 15, 16, 20, 25, 56 and 63.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

- 8 Upon information and belief the policy provisions of the liability insurance policy issued by plaintiff, U.S. Underwriters Insurance Company, provides coverage for the personal injuries sustained by the defendant, Jose Amadeo Zelaya, on or about January 23, 2007.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

9. The United States District Court, Southern District of New York should not entertain jurisdiction because plaintiff can be afforded an adequate remedy by the State Court, Bronx County where the underlying personal injury action of the defendants Jose Amadeo Zelaya and Maria Zelaya is pending.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

10. Upon information and belief the employment status of the defendant Jose Amadeo Zelaya, at the time of the occurrence on or about January 23, 2007, is before the State of New York Workers' Compensation Board.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

11. Action should be dismissed because plaintiff did not properly disclaim and the plaintiff should be estopped from litigating the issues of late notice by Amadeo Zelaya and Maria Zelaya by reason of failure to timely and properly disclaim consequently the benefits of the policy should be available to Amadeo Zelaya and Maria Zelaya by operation of law.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

12. Under the facts and circumstances of this case the injured defendant Amadeo Zelaya and Maria Zelaya has given good and timely notice to the plaintiff.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

13. Plaintiff has failed to timely and lawfully disclaimed in accordance with the insurance law of the State of New York and is thereby estopped from obtaining relief herein

WHEREFORE, the defendants Jose Amadeo Zelaya and Maria Zelaya demands judgment dismissing the complaint herein on the merits, herein together with such other and further relief as to this Court may seem just and proper under the circumstances.

Dated: December 10, 2007  
Queens, New York

Yours, etc.

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